

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

ERNEST PHELPS, et al.,)
)
Plaintiffs,)
)
vs.) Case No. 4:07CV366 CDP
)
DAPHNE DEMELLO,)
)
Defendant.)

ORDER AND MEMORANDUM

Defendant removed this case from state court on the basis of diversity jurisdiction, and filed a motion to dismiss for failure to state a claim upon which relief may be granted. Plaintiffs have responded to the motion to dismiss, but they have not addressed a jurisdictional question that arises from the face of the pleadings.

Plaintiffs' state-court petition alleged that defendant Daphne DeMello was "at all relevant times, a Missouri citizen." Defendant's removal petition alleges that she "was a resident of the State of Arizona before and at the time of commencement of this lawsuit against her." Thus, defendant does not allege her own citizenship, but instead alleges only her residence, which is not necessarily the same thing. Defense counsel obviously knows that they are two different things, since the removal notice also alleged that plaintiffs "were citizens and

residents" of Missouri. As defendant has failed to allege her own citizenship, I am not sure that I have jurisdiction of this case. If she is a Missouri citizen she cannot remove this case. 28 U.S.C. § 1441(b). Additionally, if she is a Missouri citizen there is no diversity of citizenship under 28 U.S.C. § 1332. Additionally, even if she had alleged that she is not a citizen of Missouri, I would have difficulty accepting that allegation because plaintiff has alleged the opposite. I need some proof, or a stipulation by both parties, that diversity of citizenship exists in this case.

Federal jurisdiction must be properly shown before I can rule on the motion to dismiss or take any other substantive action in the case. Therefore,

IT IS HEREBY ORDERED that no later than March 12, 2007 defendant must show cause why this case should not be summarily remanded to state court. Because there are conflicting averments, defendant must do this by presenting evidence, in the form of an affidavit or otherwise, of her own citizenship, or by stipulation, if plaintiffs now agree that defendant is a citizen of different state.



CATHERINE D. PERRY
UNITED STATES DISTRICT JUDGE

Dated this 2nd day of March, 2007.